IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

MFA.No. 34 of 2001()

OPMV.722/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD DT. 2.12.1999.
.....

APPELLANT: PETITIONER

KAMALAM, W/O.VELAYUDHAN, MALE VEEDU,
VALIYA PARAMBU, CHAMBRAKULAM P.O.,
KOTTAYIL PALGHAT.

BY ADV. SRI.T.M.SUNIL
SMT.S.CHITHRA

RESPONDENTS: RESPONDENTS
----

1. **G.SETHUMADHAVAN, S/O. C.GOVINDAN,**
THEKKINIPURA, KANHARAKKADAVU,
KOTTEKKAD, PALAKKAD.

2. **C.GOVINDAN, S/O.CHERANGADAN, 4/197,**
THEKKINIPURA, KOTTEKKAD, PALAKKAD.

3. **THE NEW INDIA ASSURANCE CO.LTD., T.B. ROAD,**
PALAKKAD.

BY ADV. SRI.C.RAGHAVAN - R1 & R2
SRI.K.K.THANKAPPAN
SRI.MATHEWS JACOB (SR) - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 34 of 2001

Dated this the 4th day of July, 2007

Judgment

Koshy, J.

This appeal is filed for enhancement of compensation by the appellant/claimant. In this appeal, even though notice was received by the insurance company, there was no appearance for the third respondent insurance company. Therefore, we have requested Shri Mathews Jacob, Senior Advocate, who is usually appearing for the third respondent in other cases, for representing the insurance company and we have heard him also, apart from the appellant.

2. Appellant, a vegetable vendor, sustained serious injuries in a motor accident. She claimed compensation of Rs.69,200/- from the respondents contending that the accident occurred due to the negligent driving of the vehicle by the first respondent which was owned by the second respondent and insured by the third respondent insurance company. Even though tribunal found that the accident occurred due to the negligence of the first respondent driver and the vehicle

was covered by insurance policy issued by the third respondent insurance company, only compensation of Rs.25,200/- was awarded. As a result of the injury, her third and fourth vertebra were affected. Ext.A4 is the wound certificate and Ext.A5 is the medical certificate. Ext.A6 is the discharge card and Ext.A9 is the disability certificate assessing disability at 5%. Tribunal accepted the above and 17 was fixed as the multiplier considering the fact that she was only aged 30 at the time of accident taking second schedule as a guideline. There is no ground to enhance the multiplier fixed by the tribunal. Tribunal has taken Rs.1000/- as the monthly income. According to her, she was getting Rs.1,500/- as monthly income as a vegetable vendor. It is also argued that her services to the family as a house wife and mother of the children also should be looked into. In any event, when second schedule was framed, monthly income of a non-earning person was fixed at Rs.1,250/- (Rs.15,000/- per year). We take that as the monthly income. If 5% disability is assessed, compensation payable will be Rs.15000 x $\frac{5}{100}$ x 17 = Rs.12,750/-. The Tribunal has granted Rs.8,000/-. Therefore, additional

compensation payable for disability and loss of earning power will be Rs.4,750/-. Tribunal, taking Rs.1,000/- as the monthly income, has granted Rs.3,000/= for loss of earning for three months for the period of treatment. Since we have taken Rs.1,250/- as the monthly income, she will be entitled to Rs.750/- more for loss of actual earnings. Considering the nature of injuries, we are of the opinion that no enhancement of compensation is needed under other heads. Hence, additional compensation of Rs.5,500/- shall be deposited by the third respondent insurance company with 8% interest from the date of application till deposit. On deposit of the amount, appellant is entitled to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.34/2001

JUDGMENT

Dated:4th July, 2007